

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: ATMOS ENERGY CORPORATION	DOCKET NO. WRU-04-26-222
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ORDER APPROVING SETTLEMENT AND GRANTING WAIVER

(Issued August 12, 2004)

On June 18, 2004, Atmos Energy Corporation (Atmos) filed with the Utilities Board (Board) a request for a waiver of the filing requirements of Iowa Code §§ 476.76 and 476.77 (2003), and 199 IAC 32 for the proposed acquisition of TXU Gas Company (TXU). The statutory provisions and Board rules require that utility reorganizations involving acquisitions be submitted to the Board for review. The statutes and Board rules allow these provisions to be waived if the Board finds that review is not necessary in the public interest. Atmos is acquiring the assets of TXU and will be required to file a proposal for reorganization unless the Board grants the waiver. The filing has been identified as Docket No. WRU-04-26-222.

On July 2, 2004, Atmos made a supplemental filing in which it provided additional support for the waiver request. Atmos is proposing to acquire substantially all of the operations of TXU for \$1.925 billion using a combination of short-term debt and common equity. Atmos anticipates obtaining permanent financing in 2005.

On July 8, 2004, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a conditional objection to the waiver request. Consumer Advocate indicated it had identified certain issues that needed to be addressed before it could support the waiver request.

On July 19, 2004, Atmos and Consumer Advocate filed a settlement agreement for Board approval. The settlement is intended to resolve all outstanding issues between Consumer Advocate and Atmos concerning the waiver request. Under the terms of the settlement, Atmos agrees to insulate Iowa customers from any adverse impact on rates, services, or service quality resulting directly from the acquisition of TXU. Atmos agrees never to attempt to recover from Iowa customers any portion of the acquisition premium or transaction costs resulting from the acquisition of TXU. Atmos agrees to accept any reasonable ratemaking treatment by the Board, including a hypothetical capital structure and capital costs, designed to insulate Iowa customers from any adverse impact from the acquisition of TXU. Finally, Atmos agrees that it will not reduce any of its charitable contributions, community activities, or civic support efforts in Iowa.

Subrule 199 IAC 7.2(11) provides that the Board will not approve a settlement unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest. The Board has considered the settlement presented by Atmos and Consumer Advocate and finds that it is reasonable. The agreement of Atmos to protect Iowa customers from any adverse effects of the acquisition of TXU

provides a basis for preventing Iowa customers from having to pay for any of the costs of the acquisition, including any effect on capital structure or costs.

The potential for adverse effects from the acquisition exist since two rating agencies are reported to be considering reducing the debt rating of Atmos because of the additional borrowing required for the acquisition. Any downward change in the debt rating would likely increase borrowing costs. The terms of the settlement ensure that any increased borrowing costs will not be passed on to Iowa ratepayers. The Board finds the settlement is reasonable, consistent with law, and in the public interest.

Pursuant to Iowa Code § 476.77(4), the Board may waive the filing requirements of § 476.77 if the Board finds a review of the reorganization is not necessary in the public interest. In rule 199 IAC 1.3 the Board has adopted four criteria for considering a waiver request. Although these criteria are not directly applicable to a § 476.77 waiver request, they provide a useful framework for analysis. The four criteria are: 1) the application of the rule would pose an undue hardship on the requesting party; 2) the waiver would not prejudice the substantial rights of any person; 3) the provisions of the rule are not specifically mandated by statute or another provision of law; and 4) substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the rule.

In the supplemental filing, Atmos stated that it would suffer undue hardship if required to expend the time and resources to make the filing of a reorganization

proposal required by the statute and Board rules. Atmos pointed out that it has only 4,750 customers in Iowa out of 1.7 million customers in 12 states. Having to pursue a full reorganization proceeding in Iowa would cause an undue delay in the acquisition and be disproportionate to the size of the Atmos operations in Iowa.

Atmos also states that the waiver would not prejudice the substantial legal rights of any person, the provisions to be waived are not specifically mandated by statute, and substantially equal protection of public health, safety, and welfare will be afforded by a means other than the provisions subject to the waiver.

The Board finds that it would be an undue hardship to require Atmos to make a complete reorganization filing and go through a proceeding, especially since the settlement protects the interests of Iowa customers. The Board also finds that the other three criteria in rule 199 IAC 1.3 are satisfied.

Based upon the approval of the settlement and satisfying the four criteria in rule 199 IAC 1.3, the Board finds that a review of the acquisition of TXU by Atmos is not necessary in the public interest. The settlement agreement provides reasonable assurances that a downward adjustment in debt rating or other adverse effect from the acquisition will not affect Iowa customers.

Iowa Code § 476.77 allows the Board to exempt a utility from the filing requirements of the statute if the Board finds that a review of the reorganization is not necessary to protect the public interest. The Board finds, in light of the settlement agreement, that a review of the proposed acquisition of TXU by Atmos is

not necessary in the public interest. The Board will grant the waiver of the filing requirements.

IT IS THEREFORE ORDERED:

1. The settlement agreement filed by the Consumer Advocate Division of the Department of Justice and Atmos Energy Corporation on July 19, 2004, is approved.
2. The waiver request filed by Atmos Energy Corporation on June 18, 2004, is granted.
3. Atmos Energy Corporation shall notify the Board when the acquisition is completed.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 12th day of August, 2004.